Fifth, calls to CCTS numbers are being blocked from some payphones, PBXs and centrex customers. While not always the case, in some instances IBT, or one of its affiliates, is the company who must reprogram the equipment to prevent this from occurring. Although call blocking is not always the fault of IBT, these problems indicate the lack of parity between IBT and its competitors.

Finally, CCTS has experienced a continuing problem of IBT billing for calls to CCTS numbers at toll rates when these calls should be billed at local rates.

All of the problems described herein have caused CCTS to not only temporarily suspend its marketing plans, but also to rethink its plans to expand. If no improvement is made in IBT's processes, CCTS's competitive service in IBT's serving areas may not be financially viable and CCTS may not be able to effectively compete. (See CCI's responses to Items (6)(g), (9), (11)(b), (11)(d), (13)(a), (14) and (17) for more specifics as to the problems CCTS has encountered attempting to compete with IBT for exchange business.)

(g) The average provisioning intervals and maintenance times for services IBT provides to CCTS is significantly longer than the service intervals applicable to its own customers. There is at minimum a five business day interval from the date CCTS sends a service request to IBT to when IBT connects the service. For its own customers, IBT's practice is to connect service anywhere from the same day to up to three days. The five days is a best case scenario which occurs only if there are no problems with the service order. If IBT believes there are any problems with the order, IBT simply rejects the order and sends it back to CCTS. When CCTS corrects the order and resubmits the order to IBT, the order goes to the end of the queue and the five days start over. CCTS has little direct knowledge of IBT's practices with its own customers, but anecdotal evidence indicates IBT tries to correct any problems and maintain its original schedule for service installation in the event of a problem with a service order. In sum, all of the information available to CCTS indicates that IBT's service intervals are substantially increased when the customer seeks service from CCTS as opposed to IBT.

(9) describe and give a current status on all complaints made to Illinois Bell Telephone Company, the Illinois Commerce Commission, the FCC or other governmental entities, by other carriers, competitors or entities that have requested interconnection, access or the ability to resell Illinois Bell Telephone Company's services.

Response:

On June 15, 1996, CCTS filed an informal complaint against IBT with the Illinois Commerce Commission regarding the service interval problem (described in the responses to Items (6)(f) and (g) above) because of the adverse impact the lack of service interval parity has had on CCTS. An example of this problem is when a customer called CCTS for service and was told

it would be a minimum of five business days to get service. The customer then called IBT on Saturday for the same service at the same location and IBT connected them within a couple of hours. Some customers have taken the time to let CCTS know why they had gone with IBT instead of CCTS. We have no idea how many others have switched to IBT for similar reasons, but did not let us know. To date, the only response of any significance to our informal complaint has been a call from the ICC Staff informing CCTS that IBT has told Staff that it will do a trial with CCTS that IBT claims will reduce the five day interval to three days. The problem is that IBT's proposed trial would only involve existing IBT customers, not new customers. In addition, CCTS received a call from IBT indicating that it wanted to do such a trial to improve service. That trial was scheduled to begin on the date these comments were being prepared. Even so, it is our understanding that the improvement to which IBT refers would not result in equal service intervals; thus, IBT would still retain this competitive advantage. CCTS has been frustrated by the lack of resolution of its informal complaint, and is considering filing a formal complaint with the Commission if a resolution of the informal complaint does not occur soon.

What is particularly troubling about the service interval disparity is that IBT is using it as a marketing tool. There have been instances in which 3-way calls were made to CCTS by a customer and an IBT representative during which the representative directed the customer to ask CCTS about the length of time it would take to connect service. It became apparent during these calls that the IBT representative was exploiting the service interval difference between IBT and CCTS in order to discourage the customer from taking service from CCTS. Clearly, these incidents establish that the service interval problem is anti-competitive, and must be corrected in order for full and fair competition to develop in areas in which IBT is the incumbent LEC.

CCTS has also complained to IBT repeatedly that calls are being blocked from payphones, PBXs and centrex customers. In some of these cases, IBT or its affiliate is the entity that must make the changes in the programming of the customer's equipment to allow access to CCTS numbers. IBT apparently does not have a process in place to make sure these changes are timely made. CCTS is forced to deal with these problems on a continuing basis and to contact IBT each time a customer reports the problem to CCTS, and then wait for IBT to correct it.

IBT also continues, after several months of CCTS complaints, charging customers toll rates to call CCTS numbers in an exchange even though they consider calls to their own numbers in that exchange to be local calls. IBT has repeatedly told CCTS that this problem has been corrected, but customers continue calling us complaining about toll charges for local calls. This is a major problem for CCTS because friends and family members calling our customers are suddenly being charged toll calls when they used to be charged for local calls, which significantly reduces that value of CCTS's service.

(11) Describe:

(a) which network elements are offered by Illinois Bell Telephone Company;

(b) the pricing methodology used for the elements;

(c) which elements have been requested by entities seeking interconnection and access; and,

(d) Illinois Bell Telephone Company's response record with respect to such requests.

Response:

CCTS is on record in the IBT Citation case (Docket 95-0296) as to the pricing problems with IBT's unbundled loops and ports in Access Area C. IBT's pricing of ports at $0 and its loading of all costs on loops, as well as the additional costs described in Item (6)(f) above, makes CCTS's unbundled services uncompetitive as compared to the customer's alternative of buying the bundled service directly from IBT.

(13) Describe whether number portability is being provided on an interim or full basis, and if on an interim basis:

(a) the characteristics of the interim system and differences between the terms available to Illinois Bell Telephone Company and its local competitors;

(b) the pricing methodology used to determine charges for the type of number portability provided; and,

(c) when full number portability will be implemented.

Response:

IBT is providing interim number portability on a remote call forwarding basis. IBT charges CCTS $3 per month per line for this service. Since IBT is the incumbent LEC, IBT does not incur the call forwarding costs to keep existing customers. CCTS, on the other hand, must pay the extra costs and either absorb them to maintain pricing parity with IBT, or pass them along to its customers in the form of higher rates. With the unbundled loop and port pricing scheme discussed in the response to Item (11) above, CCTS's costs for a customer wishing to keep its current number are significantly higher than IBT's costs for the same customer.

(17) Describe the factors that should be evaluated in assessing whether in-region interLATA authorization for Illinois Bell Telephone Company would be consistent with the public interest, convenience and necessity. Are current conditions such that authorization for Illinois Bell Telephone Company to provide in-region interLATA service would be consistent with the public interest, convenience, and necessity? If not, why not? If not, what changes are needed before such authorization would be consistent with the public interest, convenience, and necessity?

Response:

When CCTS first talked with IBT about interconnection and unbundling, CCTS told IBT that CCTS could be the "poster child" that IBT could use in support of its efforts to get interLATA relief. CCI (ICTC) has a 100 year heritage in the telephone business; CCI and IBT have developed excellent working relationships at all levels of each company over the course of the last 100 years; CCTS is a small competitor in three relatively small downstate IBT exchanges, and; CCTS knows the local telephone business, and provides state-of-the-art, high quality service. What CCTS was asking was for its customers to be treated on an equal basis with how IBT treats its own customers. As evidenced by these comments, IBT is not treating CCTS's customers equally to its own. IBT continues to provide its own customers preferential treatment, and to impose unduly high costs on CCTS that IBT does not have to incur.

IBT operating personnel have attempted to help CCTS work through some of the problems discussed in these comments, but CCTS has seen limited improvement. Apparently the policies which give rise to the problems described in these comments have been set for the operating people, which makes it impossible for them to do their jobs in a competitively neutral manner. The result is that the competitive viability of CCTS and other competitors is threatened. Quite simply, if IBT cannot make limited competition work in the smaller exchanges such as the three in which CCTS operates, it is difficult to understand how IBT could make it work on a more widespread and permanent basis.

The foregoing problems CCTS has experienced since attempting to compete on a facilities-basis with IBT establish that IBT has not met the "Checklist" and should not be allowed into the interLATA market. Postponing interLATA relief is the only effective leverage the ICC and IBT's competitors have to correct the situation. If it is not corrected prior to IBT gaining interLATA relief, competitors like CCTS will not only be faced with the existing cost and service disadvantages, but they will also be faced with a formidable competitor who can leverage combined local and long distance services in a manner no other competitor can begin to match. With such multiple disadvantages, infant competitors such as CCTS will not be viable competitors to IBT for long. That result would not be consistent with the public interest, convenience and necessity.

Respectfully submitted,

CONSOLIDATED COMMUNICATIONS INC.

Edward B. Pence
Senior Manager of Regulatory Services

CERTIFICATE OF SERVICE

I, EDWARD B. PENCE, Senior Manager of Regulatory Services for Consolidated Communications Inc, hereby certifies that copies of the forgoing comments were served on the parties on the attached service list by first class mail, proper postage prepaid on the 31st day of July, 1996.

Edward B. Pence

Major Pro-Competitive Actions:
Ameritech's Average Time to Comply
1/6/97

State	Competitive Issue	Docket/Case Number	Commission Order Date	Date Action is Required	Action Date	Time to Comply (Days)*
Illinois	Unbundling and Interconnection	94-0096 et al	7-Apr-95	22-May-95	pending	595
Illinois	IntraLATA Presubscription	94-0096 et al	7-Apr-95	7-Apr-96	7-Apr-96	0
Illinois	MFS Interconnection**	94-0442	10-Feb-95	10-Feb-95	24-May-95	103
Illinois	Wholesale	95-0458 et al	26-Jun-96	26-Jul-96	pending	194
Michigan	City Signal Interconnection***	U-10647	23-Feb-95	25-Mar-95	6-Oct-95	195
Michigan	MCI Complaint (IntraLATA Presubscription)	U-10138	10-Mar-95	1-May-96	pending	250
Michigan	Wholesale	PA 216 - Telecom Act	30-Nov-95	1-Jan-96	28-May-96	148
Michigan	Generic Interconnection	U-10860	5-Jun-96	5-Jul-96	pending	185
					Average Time to Comply (Days)	**209**

* If action is pending, then this value is computed based upon the current date (1 6 97) and the action required date

** For purposes of this example, the filing of the Ameritech/MFS interconnection agreement is considered to be an "action"which resolves the issue

*** Action date is estimated, but conservative The Commission Ordered the tariffs to be filed by 10 13

Exhibit JJP-7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERITECH MICHIGAN, INC.,
a Michigan Corporation,

Plaintiff,

v.

JOHN G. STRAND, DAVID A. SVANDA and JOHN C. SHEA,

Defendants.

Case No. 5:96-CV-166

HON. ROBERT HOLMES BELL

OPINION

Before the court is a motion by Ameritech Michigan (Ameritech) seeking a preliminary injunction against enforcement of the June 26, 1996, Order of the Michigan Public Service Commission (Commission). The defendants are individual members of the Commission. The June 26 Order reinstated four previous Commission Orders which required Ameritech to implement intraLATA dialing parity and set out an implementation schedule.[1] Ameritech claims it is entitled to a preliminary injunction against the enforcement of the Commission's June 26 Order on the basis that (1) the Commission's Order was preempted by the Federal Telecommunications Act and (2) Ameritech has a constitutionally protected liberty interest in having §312 of the Michigan Telecommunications Act (MTA) interpreted in its favor.

[1] The Commission's Orders of February 24, 1994 and July 19, 1994 required the implementation of dialing parity, while the Commission's Orders of March 10, 1995 and June 5, 1995 included provisions for implementation of dialing parity.

On July 9, 1996, Ameritech filed a motion for stay, motion for rehearing, and a motion for reopening of the record with the Commission. On October 7, 1996, the Commission issued an Order denying all three of Ameritech's motions. On October 11, 1996, Ameritech filed a motion for temporary restraining order, order to show cause and preliminary injunction with this Court. On the same day, this Court denied Ameritech's motion for a temporary restraining order. This Court also set a preliminary injunction hearing for October 18, 1996. At the October 18 hearing, the Court denied AT&T and MCI's motions to intervene but granted them amicus curiae status with the ability to file briefs and provide oral arguments at the discretion of the Court.

Background

Before setting out the particular facts of this case, it is necessary to explain the historical context in which it arises. In January 1982, AT&T and the Bell Operating Companies (BOCs), including Michigan Bell, entered a settlement agreement, a "Modified Final Judgment" (MFJ), in an anti-trust action brought by the United States against AT&T and the BOCs. The settlement was approved by the federal court in *United States v. American Telephone and Telegraph Co.*, 552 F.Supp. 131 (D.D.C. 1982) *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). Since the settlement, Michigan Bell has begun doing business under the name of Ameritech Michigan. The settlement included the establishment of LATAs, local access and transport areas which are similar in size and location to area codes. Under the

settlement, the BOCs, including Michigan Bell, were prohibited from providing interLATA long distance services, long distance services between LATAs. Examples of companies which provide interLATA toll services, sometimes called inter-exchange carriers, include AT&T and MCI.

IntraLATA toll services are long distance services within a LATA. Ameritech has had a monopoly on a significant part of intraLATA toll services in Michigan. When a customer of one of the interLATA service providers makes a long distance call within a LATA, Ameritech handles the call unless the customer dials several extra digits or an access code. IntraLATA dialing parity refers to the ability of customers of telecommunication companies other than the "dial-1" toll provider, i.e., Ameritech, to make a toll call without having to dial an access code or extra digits.

The Federal Telecommunications Act

Ameritech claims that the Federal Telecommunications Act preempts the June 26, 1996, Commission Order requiring Ameritech to implement intraLATA dialing parity. The Federal Telecommunications Act contains provisions concerning the Bell operating companies. Section 271(e) states:

> (2) IntraLATA toll dialing parity
>
> (A) Provision required. A Bell operating company granted authority to provide interLATA services under subsection (d) of this section shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of authority.
>
> (B) Limitation. Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require

> a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after February 8, 1996, whichever is earlier....

47 U.S.C. § 271(c)(2)(A) & (B).

The exception in the statute was a result of the Breaux-Leahy amendment, which was explained by Senator Leahy:

> Without this amendment, S. 652 would have prohibited all States from ordering a Bell operating company to provide dialing parity for in-State toll calls before the company is authorized to provide long-distance service in that area...
>
> In addition, as introduced, the bill rolled back the actions of 10 States that have already ordered local telephone companies to provide dialing parity for in-State toll calls.
>
> The 10 States that would have had to undo their dialing parity requirements are: Illinois, Wyoming, Wisconsin, Michigan, Florida, Connecticut, Georgia, Kentucky, Minnesota, and New York.
>
> These States recognize that dialing parity is a key to healthy competition for in-State toll calls.
>
> They should not be second-guessed and preempted on the Federal level....

S8349 Congressional Record, Senate June 14, 1995.

Michigan Telecommunications Act

Ameritech claims that the 1995 amendments to Michigan Telecommunications Act, MCL 484.2201 et seq., superseded the four previous Orders of the Commission, which required intraLATA dialing parity. Ameritech further claims that because the Orders were superseded, the Federal Telecommunications Act preempts the June 26, 1996 Commission Order.

On a number of occasions, The Commission has addressed the issue of intraLATA dialing parity in Michigan. On December 21, 1989, the Commission found that "the '10xxx' dialing arrangement provided the IXCs [inter-exchange carriers] with 'equal access' to GTE's and Michigan Bell's local exchange network as required by federal authorities." *GTE North v. Public Service Commission*, 215 Mich. App. 137, 141 (1996). On July 31, 1992, MCI filed a complaint with the Commission, in which they sought an order directing Ameritech and GTE to implement intraLATA dialing parity. On February 23, 1993, the Commission dismissed MCI's complaint and deferred consideration of whether the Commission should implement dialing parity until some future time. *Id.* at 144. On May 21, 1993, the Commission reopened the issue of intraLATA dialing parity. *Id.* at 145. After a number of hearings over this issue and input from Michigan Bell, GTE, MCI, AT&T, Litel, the Michigan Exchange Carriers Association, and Attorney General Frank Kelley, on February 24, 1994, the Commission issued an opinion and order which stated:

> "[T]he Commission finds that intraLATA dialing parity is necessary for effective competition and, therefore, it is in the public interest. Further, the Commission finds that intraLATA dialing parity should be implemented when Michigan Bell and GTE are authorized and ready to provide interLATA toll service, but no later than January 1, 1996.... [I]f federal policy makers continue to impose restrictions against participation in one market on the Bell and GTE operating companies, continuing to postpone competitive entry into all other markets can no longer be justified. Given the clear competitive mandates of Act 179 and increasing pressure for competitive entry into markets previously served only on a monopolistic basis, intraLATA dialing parity can no longer be delayed."

February 24, 1994 Opinion at 42, 43. The opinion further stated, "a task force should be established to work out the procedure for the IXCs [inter-exchange carriers] to be in position to fully and fairly compete in the intraLATA toll market." A July 19, 1994 Commission Order denied GTE and Michigan Bell's motion for rehearing and reconsideration of the February 24, 1994 Order.

GTE North and Michigan Bell appealed the February 24, 1994 and July 19, 1994 Orders of the Commission. In *GTE North v. Public Service Commission*, 215 Mich. App. 137 (1996), the Court of Appeals upheld the Commission's Orders. The Court ruled that the Commission had the statutory authority to implement intraLATA dialing parity. *Id.* at 153, 154. The Court also ruled that the Commission had followed proper procedures in the case. *Id.* at 156, 157. With respect to Ameritech's challenge to the merits of the Commission decision, the court stated "the PSC was required to make a judgment call based upon the various pros and cons of requiring implementation of intraLATA dialing parity by date certain, regardless of whether federal interLATA relief is granted, or instead deferring implementation indefinitely to await further action by federal policy makers concerning the issue of interLATA relief. In its February 24 and July 19, 1994, opinions, the PSC majority identified cogent reasons for preferring the former situation to the latter." *Id.* at 164. This decision was not appealed by GTE or Michigan Bell.

On March 10, 1995, the Commission issued another Opinion and Order in response to the Report of the Dialing Parity Task Force, which was submitted to the Commission on September 23, 1994. The Commission stated that intraLATA dialing parity should be implemented on a "flash-cut" basis, all offices in unison rather than as soon as conversion was possible at an individual office, by January 1, 1996. March 10, 1995 Opinion at 14-15. The Commission also denied Ameritech's request to delay intraLATA parity until January 1, 1997. *Id.* at 16,17. With regard to offices that do not convert according to the stated schedule, the Commission found that there should be a 55% discount on access charges in those offices *Id.* at 20. The Commission further stated that Ameritech mischaracterized these discounts as penalties. *Id* at 21. The Commission explained that "the discount reflects the fact that there are different levels of service that warrant different pricing. Here, the access that will be provided in offices that do not convert to intraLATA dialing parity as scheduled requires the dialing of access codes, which is different from dialing a single digit." *Id.* The June 5, 1995 Commission Order denied Ameritech's motion for rehearing and reconsideration of the March 10, 1995 Order. These two Commission Orders are currently being appealed to the Michigan Court of Appeals by GTE and Ameritech, docket numbers 186602 and 184718 respectively. Oral argument was heard before the Court of Appeals on October 9, 1996.

On November 30, 1995, Governor John Engler signed 1995 PA 216, which amended the Michigan Telecommunications Act and included section 312b, a new section concerning intraLATA dialing parity. Ameritech claims that this statute caused the Commission's February 24, 1994, July 19, 1994, March 10, 1995, and June 26, 1995 Orders to be superseded. The relevant parts of section 312b state:

> 484.2312b. Providing + intra-LATA toll dialing parity; specific dates (1) Except as otherwise provided in subsection (2) or (3), a provider of basic local exchange service shall provide 1 + intra-LATA toll dialing parity and shall provide inter-LATA toll service to an equal percentage of customers within the same service exchange on the following dates:
>
> (a) To 10% of the customers by January 1, 1996.
> (b) To 20% of the customers by February 1, 1996.
> (c) To 30% of the customers by March 1, 1996.
> (d) To 40% of the customers by April 1, 1996.
> (e) To 50% of the customers by May 1, 1996.
>
> (2) If the inter-LATA prohibitions are removed, the commission shall immediately order the providers of basic local exchange service to provide 1 + intra-LATA toll dialing parity.
>
> (3) Except for subsection (1)(a), subsection (1) does not apply to the extent that a provider is prohibited by law from providing either 1 + intra-LATA toll dialing parity or inter-LATA toll services as provided under subsection (1).
>
> (4) Except as otherwise provided by this section, this section does not alter or void any orders of the commission regarding 1 + intra-LATA toll dialing parity issued on or before June 1, 1995.
>
> (5) The commission shall immediately take the necessary actions to receive the federal waivers needed to implement this section.

Before §312 was passed, a proposed Senate bill contained the following language:

> Until the inter-LATA prohibitions are removed for providers of basic local exchange service, a provider of basic local exchange service is not required to provide 1 + intra LATA toll dialing parity. If the inter-LATA prohibitions are removed, then a provider of basic local exchange service shall offer to other providers 1 + intra-LATA toll dialing parity.

This language was subsequently withdrawn and §312b was adopted instead. Both sides in their briefs before this Court and in their briefs before the Commission prior to its June 26, 1996 Order introduced extensive legislative history in support of their interpretation of the purpose and effect of the Michigan Telecommunications Act.

On February 8, 1996, Congress passed the Federal Telecommunications Act of 1996. The Act, quoted above dealt with the issue of intraLATA dialing parity. It is Ameritech's contention that because of §312b of the Michigan Telecommunications Act, Michigan does not fit into the stated exception of the Federal Telecommunications Act.

On May 2, 1996 MCI and AT&T filed a joint motion to compel Ameritech to comply with the Commission's prior orders which had required intraLATA dialing parity. Ameritech filed a response brief on May 9, 1996, and oral argument was heard by the Commission on May 23, 1996. On June 26, 1996, the Commission issued an Order granting the motion to compel.

The Order explained the positions of the parties. MCI and AT&T claimed that the schedule contained in MTA §312b was intended as a phase-in period for intraLATA dialing parity and that the schedule did not refer to intraLATA dialing parity after

May 1, 1996. They claimed that the Commission's previous orders are fully effective after May 1, 1996. AT&T and MCI focused on §312b (4) for the proposition that the MTA was not intended to supersede the previous orders.

Ameritech claimed that the schedule only required it to provide intraLATA dialing parity for 10% of its customers until it received interLATA relief. Ameritech also claimed that because §312b will be repealed in its entirety on July 1, 1997, *see* MCL §484.2604, it makes little sense to say that the schedule was only intended to extend to May 1, 1996.

The Commission found that §312b on its face is not clear because it is silent as to intraLATA dialing parity after May 1, 1996. The Commission stated that based on the specific words of the act, the Legislature did not create linkage between intraLATA parity and interLATA relief. They pointed out that the statute did not say that "intraLATA dialing parity doesn't have to go forward , except for the first ten percent, unless and until the [federal] interLATA prohibition has been lifted." June 26, 1996 Order at 8. They also pointed out that "the phrase 'no more than' could have been inserted before each of the numerical percentages found in subsections (1)(a) through (1)(e) of Section 312b." Id. With respect to the language of Section 604(2), the Commission stated that "[b]ecause the Commission has already ruled that Ameritech Michigan should implement intraLATA dialing parity ... , the future repeal of Section 312b simply removes any doubt that 100% implementation is consistent with the

Legislature's intent." *Id.* at 9. The Commission agreed with AT&T and MCI's interpretation that the statute only provided Ameritech an opportunity to ramp-up its intraLATA dialing parity coverage. They also agreed with AT&T and MCI's interpretation that §312b(4) of the MTA did not void the Commission's previous orders.

The Commission found that the legislative history of §312b contradicted Ameritech's interpretation of the statute. The Commission focused on the withdrawn Senate Bill which would have inextricably linked intraLATA parity with interLATA relief. The Commission also stated:

> As originally written, Section 312b(4) retained the effectiveness of all Commission orders regarding dialing parity issued before June 30, 1995. However, that date was in conflict with the June 1, 1995 cut-off being considered by Congress in legislation that eventually became the Telecommunications Act of 1996. This created the possibility that the Commission's orders concerning dialing parity might not be considered 'grandfathered' and that Michigan, like a majority of the states, would be precluded for up to three years from requiring Ameritech Michigan to implement dialing parity unless the company first received authority to provide interLATA toll service.
>
> To avoid that result, the language of Section 312b(4) was amended by replacing 'June 30, 1995' with 'June 1, 1995.' In making that change, the Legislature ensured (1) that the removal of interLATA prohibitions would not become a condition precedent to requiring Ameritech Michigan to provide intraLATA dialing parity, and (2) that prior Commission orders requiring the comprehensive implementation of dialing parity would not be overturned by the new federal law.

Id. at 12-13.

The Commission concluded that "Ameritech Michigan's interpretation of Section 312b should be rejected and the construction proposed by MCI and AT&T ... should be adopted

instead. The Commission therefore concludes that, now that the 5-month phase-in period has expired, Ameritech Michigan must abide by the dialing parity conversion schedule established by the February 24, 1994, July 19, 1994, and March 10, 1995 orders." *Id.* at 14. The Commission also stated that the 55% discount should remain at its previously established level.

On July 9, 1996, Ameritech filed a motion for stay, motion for rehearing, and a motion for reopening of the record. On October 7, 1996, the Commission denied Ameritech's motions. Ameritech bases its preliminary injunction claim in this Court on two propositions: (1) that the Commission's Order was preempted by the Federal Telecommunications Act and (2) that Ameritech has a constitutionally protected liberty interest in having §312 of the Michigan Telecommunications Act interpreted in its favor.

Analysis

This court has subject matter jurisdiction in this case because the plaintiff claims that the Federal Telecommunications Act preempts the Commission's June 26, 1996 Order. A federal court has subject matter jurisdiction when a party seeks an injunction of a state administrative agency's order under a claim of preemption. *Alltel Tennessee v. Tennessee Public Service Com'n*, 913 F.2d 305, 308 (6th Cir. 1990). The next inquiry is whether this Court should exercise jurisdiction in this case.

The Supreme Court has acknowledged that it is the duty of the federal courts to exercise jurisdiction that is conferred

upon them by Congress. *Quackenbush v. Allstate Insurance Co.*, 517 U.S. ___, 135 L.Ed.2d 1, 12 (1996) *(citing Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 821, (1976)). "This duty is not, however, absolute." *Quackenbush*, 135 L Ed 2d at 13 *(citing Canada Malting Co. v. Paterson S. S., Ltd.*, 285 U.S. 413, 422 (1932)). The Supreme Court has "carefully defined ... the areas in which such 'abstention' is permissible, and it remains 'the exception, not the rule.'" *New Orleans Public Service, Inc. v. Council of the City of New Orleans*. 491 U.S. 350, 359, (1989) *(citing Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 236 (1984)).

One of the abstention doctrines used by the federal courts was introduced in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). In *Burford*, the Court stated that it "is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of the state governments in carrying out their domestic policy." *Id.* 319 U.S. at 317.

In *New Orleans Public Service*, the Court summarized *Burford*.

> In *Burford v. Sun Oil Co.*, a Federal District Court sitting in equity was confronted with a Fourteenth Amendment challenge to the reasonableness of the Texas Railroad Commission's grant of an oil drilling permit. The constitutional challenge was of minimal federal importance, involving solely the question whether the commission had properly applied Texas' complex oil and gas conservation regulations. Because of the intricacy and importance of the regulatory scheme, Texas had created a centralized system of judicial review of commission orders, which 'permit[ted] the state courts, like the Railroad Commission itself, to acquire a specialized knowledge' of the state courts' review of the regulations and industry. We found the state courts' review of commission decisions 'expeditious and adequate,'

> and, because of the exercise of equitable jurisdiction by comparatively unsophisticated Federal District Courts alongside state-court review had repeatedly had led to '[d]elay, misunderstanding of local law, and needless federal conflict with state policy,' we concluded that 'a sound respect for the independence of state action requir[ed] the federal equity court to stay its hand.

New Orleans, 491 U.S. at 360 citations omitted.

The *Burford* doctrine has been further defined in other Supreme Court cases. In *Alabama Public Serv. Com'n v. Southern R. Co.*, 341 U.S. 341 (1951), the Southern Railway Company brought a Fourteenth Amendment Due Process action in federal district court to enjoin the members of the Alabama Public Service Commission and the Attorney General of Alabama from enforcing the laws of Alabama which prohibited discontinuance of certain railroad passenger services. *Id.* at 342. The Commission had denied the Railway's request to discontinue two lines. The Railway had the right to appeal the Commission decision to the circuit court of Montgomery County. *Id.* at 348. The Court stated that the federal court was being asked to decide on an "essentially local problem." *Id.* at 347. It concluded "[a]s adequate state court review of an administrative order based upon predominantly local factors is available to appellee, intervention of a federal court is not necessary for the protection of federal rights." *Id.* at 349.

In *New Orleans Public Service*, the Supreme Court spelled out the criteria for *Burford* abstention:

> Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are "difficult

> questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case at bar"; or (2) where the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."

New Orleans, 491 U.S. at 361; see also *Coalition for Health Concern v. LWD Inc.*, 60 F.3d 1188, 1194 (6th Cir. 1995).

In *Quackenbush*, the most recent Supreme Court case which discussed *Burford*, the Court stressed that the abstention decision must "reflect 'principles of federalism and comity.'" *Quackenbush* 135 L.Ed. 2d at 20. The court must balance the federal interests in retaining jurisdiction over the dispute and the competing concern for the "independence of state action." *Id.* The Court also explained that this balance only rarely favors abstention. *Id.* at 21.

I.

Abstention is appropriate under *New Orleans* and *Quakenbush*. First, Ameritech has an adequate and timely state remedy. MCL § 484.2203(7) states that, "[a]n order of the commission shall be subject to review as provided in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws." MCL §462.26 states "any common carrier or other party in interest, being dissatisfied with any order of the commission fixing any rate, or any order fixing any regulations, practices, or services, may within 30 days from the issuance and notice of that order file an appeal as of right in the court of appeals." Allowing Ameritech to appeal the Commission's Order

directly to the court of appeals is certainly a timely and adequate state remedy. This is especially true in light of the fact that the basis of Ameritech's claim is actually a question of state law and state legislative intent.

Second, this is a difficult question of state law bearing on policy problems of substantial public importance, even transcending the results in the case at bar. The Federal Telecommunications Act and the discussion in the Congressional Record accompanying it clearly state that the exception in §271(e) was created for Michigan and nine other states. The key issue is whether Michigan did something to fall outside the exception expressly created for it by the FTA. This is a question of state law and state legislative intent regarding a state statute's effect on a number of state agency orders. This is not, as the plaintiff claims, a case which "does not require this Court to go beyond the four corners of the June 26, 1996 Order." This is similar to *Coalition for Health Concern*, where the Sixth Circuit stated that "plaintiff's claims do not and cannot arise in isolation from state law issues nor are they premised solely on alleged violations of federal law." 60 F.3d. at 1194.

The Michigan Telecommunications Act is a comprehensive statute which deals with the regulation of the telecommunications industry in Michigan among other things. The State has a significant interest in regulating this industry.

Under the Michigan Telecommunications Act, the Commission is granted a number of powers. It is given jurisdiction to administer the act, power to conduct investigations, hold hearings, issue findings and orders, and it is given control over various aspects of rates, local directory assistance, approval of license applications, amending geographical areas of a license, and discontinuance of a regulated service. See MCL. §§ 484.2207, .2208, .2302, .2303, .2304, .2306, .2310, .2312, .2313, .2316, and .2601. The Commission has extensive experience in the area of intraLATA dialing parity as demonstrated by its numerous hearings and opinions on the subject. If this court follows the plaintiff's invitation to exercise jurisdiction, this court would be intruding into regulation of an industry for which the Commission is particularly well suited. This Court also recognizes the potential problems of judicial management that would be part of issuing a decree in this matter. In *Ada-Cascade Watch Co. v. Cascade Resource Recovery*, 720 F.2d 897, 906 (6th Cir. 1983), the Sixth Circuit stated that "this court is ill-equipped to review state rules and regulations which have an entirely local effect. To do so would be unnecessary and a disruptive interference into the local affairs of the State of Michigan."

The confidence that Michigan has placed in the Commission is further demonstrated by the fact that Commission Orders can be directly appealed to the Michigan Court of Appeals. Ameritech has already exercised its appeal as a matter of right on

Commission Orders on intraLATA dialing parity. Ameritech has already appealed two Commission Orders to the Court of Appeals. See *GTE North v. Public Service Commission*, 215 Mich. App. 137 (1996). Ameritech is also in the process of appealing the March 10, 1995 and June 5, 1995 Orders to the Michigan Court of Appeals. Finally, Ameritech can still appeal the June 26, 1996 Order to the Michigan Court of Appeals.

Third, the exercise of federal review in this case would disrupt Michigan's effort to establish a coherent policy with respect to a matter of substantial public concern. The Michigan Public Service Commission has addressed the issue of intraLATA dialing parity a number of times since 1989. As stated above, the Michigan Court of Appeals has reviewed, is reviewing, and may review appeals from the Commission's Orders on intraLATA dialing parity. If this court reviews this order, which is based on state law interpretation, it could disrupt the regulatory scheme which the Commission and the Michigan Court of Appeals have adopted and are continuing to adopt.

Fourth, when the federal interest in retaining jurisdiction is balanced against Michigan's concern for the independence of state action, Michigan prevails. The Federal Government has spoken with regard to its interest in Michigan's regulation of its intraLATA toll market. Congress expressly exempted Michigan from the requirements of linkage between interLATA capabilities and intraLATA dialing parity.

Congress appreciated the State's recognition that dialing parity is a key to healthy competition for in-State toll calls,

and specifically determined that the States "should not be second-guessed and preempted on the Federal level." S8349 Congressional Record, Senate June 14, 1995.

The Congressional exemption for the 10 states with dialing parity requirements is similar to a federal statute that merely incorporates the laws of the various states. In such situations, if there is any doubt as to the proper meaning of the state statute, abstention is appropriate. *Brown v. First National City Bank*, 503 F.2d 114, 118 (2nd Cir. 1974).

The State has an overriding interest in the subject matter. This is evidenced by the fact that before the Federal Telecommunications Act was passed, Michigan Governor John Engler along with eight other governors wrote a letter to Thomas J. Bliley, Jr., the Chairman of the House of Representatives Commerce Committee, stating that "[a]ny amendment preempting the states on intraLATA toll dialing parity penalizes states that have implemented the very procompetitive policies the bill is intended to further....We respectfully urge you to oppose any amendment that preempts the states authority to order interLATA toll dialing parity."

When federal and state interests are balanced, Michigan's interest in having the issue adjudicated in a state forum is significantly greater than any interest the Federal government might have in this matter.